



United States Department of the Interior



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IN REPLY REFER TO:
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May 18, 2006

Expiration of Administrative Closure Decisions Western Colorado Desert plan amendment to the California Desert Conservation Area Plan

On the following date decisions were made administratively closing certain areas to off highway vehicle (OHV) use on a temporary basis pending approval of the Decision Record (DR) for the Western Colorado Desert (WECO) plan amendment to the California Desert Conservation Area (CDCA) Plan. The DR for the WECO plan amendment was signed on January 31, 2003.

Painted Gorge area

November 30, 2001

In litigation brought in Federal District Court, plaintiffs alleged that BLM was in violation of Section 7 of the Endangered Species Act by failing to enter into formal consultation with the Fish and Wildlife Service on the effects of the adoption of the CDCA plan. *See Center for Biological Diversity v. BLM*, CV-00-927 (WHA) (N.D.Cal). Plaintiffs and BLM agreed to settle the case. A series of settlement agreements, collectively referred to as a Consent Decree, were entered. As reflected in the Consent Decree, BLM ultimately agreed to undertake certain actions on a temporary basis pending signing of a decision document for each applicable plan amendment. One of the provisions of the Consent Decree established a date by which route designation in the WECO plan area would be accomplished. *See* Stipulation and Proposed Order to Amend Consent Decree, para. 5, March 28, 2002. In December 2003, the Decision Record for the WECO Plan was signed. As explained in the accompanying Environmental Assessment and Draft CDCA Plan Amendment, the BLM was required to designate as open, closed, or limited OHV routes on public lands pursuant to federal regulation, BLM policy and the CDCA plan of 1980, as amended. The environmental impacts of designating routes for OHV use were fully analyzed in the WECO plan amendment and Environmental Assessment.

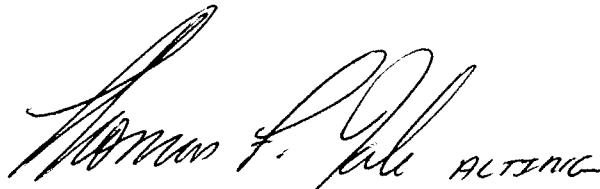
In general, the expressed rationale for the above administrative closures was that until the Bureau of Land Management could complete the WECO plan amendment, complete consultation, and issue a DR, the temporary closures would remain in place to provide additional short term protection for listed species. The Painted Gorge area closures were implemented under 43 CFR 8341.2(a). Re-opening requires a determination by the Authorized Officer that the adverse effects justifying the closures have been eliminated and measures implemented to prevent recurrence. The lack of Endangered Species Act consultation on the CDCA plan and its WECO plan area, and the lack of a

plan amendment document for the WECO plan area (the expressed justifications for the closures), were satisfied with the completion of consultation and the signing of the WECO DR in December 2003. With signing of the WECO DR, the administrative closures became inconsistent with the CDCA Plan, obsolete, and, since the underlying justifications for the closures have been satisfied, the closures have expired by their very terms. To the extent that a specific written determination is required, this memorandum documents that determination.

My determination is based upon my review and understanding of the circumstances leading to the administrative closures, the litigation in CBD v. BLM, C-00-927 (WHA), the ensuing Consent Decree in that case, and various threatened and applied enforcement and other actions therein, the Environmental Assessment for the WECO plan amendment to the CDCA Plan, and the administrative records for the closure and amendment processes.

Should the CDCA Plan as amended by the WECO plan amendment be further amended, additional consultation and environmental review will be conducted as necessary. Since the WECO plan amendment is anticipated to be in effect for the next 10-15 years, and since additional consultation and further environmental review will be accomplished as necessary, measures have been taken, are in place, and will be taken as necessary to prevent the recurrence of a lack of consultation, and the lack of a CDCA plan amendment for the WECO plan area.

The express purposes of the administrative closures listed above were to provide additional protection to listed species and habitat pending consultation and the signing of a decision document for the WECO plan amendment. Since the express purposes of the administrative closures have been satisfied with signing of the DR, the temporary closures automatically terminate. Since these closures have terminated by their express terms, this determination is not a decision subject to appeal and review by the IBLA.

A handwritten signature in black ink, appearing to read "Vicki Wood". To the right of the signature, the word "ALTERNATE" is written in a smaller, less legible script.

Vicki Wood
Field Manager
El Centro Field Office